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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 RANDALL LAWRENCE and
11 MICHAEL McCONNELL,

Plaintiffs,

12 vs.

13 UNITED STATES DEPARTMENT
14 OF THE TREASURY; UNITED
15 STATES BUREAU OF THE MINT;
and the UNITED STATES OF
AMERICA,

Defendants.

CASE NO. 14cv594-WQH-NLS
ORDER

16 HAYES, Judge:
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18 The matter before the Court is the Motion to Dismiss the Complaint for Failure
19 to State a Claim (“Motion to Dismiss”), filed by Defendants United States Department
20 of the Treasury, United States Bureau of the Mint, and the United States of America.
(ECF No. 3).

21 **I. Background**
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23 On March 14, 2014, Plaintiffs Randall Lawrence and Michael McConnell
24 initiated this action by filing a Complaint for Declaratory Judgment (“Complaint”) in
this Court. (ECF No. 1).

25 **A. Allegations of the Complaint**
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27 Plaintiffs are “the owners of a unique United States coin, a 1974-D Aluminum
28 Cent.” *Id.* at 1. Hundreds of thousands of 1974 Aluminum Cents were minted, and at
least dozens of these coins were handed out by the United States Mint to U.S.

1 Government officials while attempting to persuade Congress to proceed with their use
2 to replace copper pennies in 1974. Congress ultimately decided to not adopt aluminum
3 cents, and the U.S. Mint melted down most of the specimens that were still at the
4 Philadelphia Mint facility, and collected a majority of those that had been distributed
5 in Washington, D.C. to also be destroyed. The Government's records show that no one
6 knows exactly how many aluminum cents were not recovered and are still in existence.
7 "While it is rumored that only a dozen or so Aluminum Cents were minted at the
8 Denver Mint, only Plaintiff's specimen is known to exist at this time." *Id.* ¶ 9. The
9 coins struck in Denver were intermingled with those manufactured in Philadelphia once
10 they reached Washington, and were distributed in a similar manner. Although the U.S.
11 Mint has claimed that no records exist indicating that any Aluminum Cents were
12 authorized to be struck at the U.S. Mint's Denver facility, "the Denver Mint could not
13 have made the Aluminum Cents without a specific order to do so." *Id.* ¶ 38.

14 Plaintiff Lawrence is the son of the Harry Edmond Lawrence, "who served with
15 distinction for approximately 20 years at the Denver Mint, predominantly in the
16 assistant superintendent's position, retiring as assistant superintendent in 1980." *Id.* ¶
17 34. "Harry Lawrence was seconded to Washington, D.C. during 1974, and on
18 information and belief he participated in the various hearings and meetings with
19 Congressmen, Senators and their staff relating to the 1974 Aluminum Cent." *Id.*
20 "Harry Lawrence died in 1980, and Plaintiff Lawrence obtained the 1974-D aluminum
21 cent that is the subject of this action along with his father's other personal property."
22 *Id.* ¶ 35.

23 On February 26, 2014, the Chief Counsel for the U.S. Mint sent Plaintiffs a letter
24 demanding the return of their aluminum cent. The letter stated that the Government
25 takes the position that, because Congress never issued an aluminum cent as legal tender,
26 any aluminum cent remains property of the federal government, regardless of how long
27 it has been in private hands. A similar letter was sent to the auction house engaged by
28 Plaintiffs to sell the coin.

1 “Under the Government’s theory, it has the legal basis to commence forfeiture
2 proceedings against some of the most valued coins in the numismatic community,
3 whether found in a public or private collection, or offered for sale.” *Id.* ¶ 57. “Such a
4 circumstance would be a disaster for numismatists and the public generally. Collectors
5 who acquired patterns and other non-legal tender coins in good faith from dealers,
6 auction houses or other collectors, or as inheritances from other collectors in their
7 families would be forced to prove that they are entitled to retain their coins. In many
8 cases, collectors would be unable to overcome the Government’s presumption that their
9 coins were removed from the Mint improperly because records relating to specific coins
10 that left the Mint decades or even a century ago are not available.” *Id.*

11 The Complaint alleges a single count for declaratory judgment. The Complaint
12 requests “a declaratory judgment that the Government’s claim to Plaintiffs’ Aluminum
13 Cent is invalid.” *Id.* ¶ 62.

14 **B. Motion to Dismiss**

15 On June 3, 2014, Defendants filed the Motion to Dismiss. (ECF No. 3).
16 Defendants contend that the Complaint fails to state a claim upon which relief can be
17 granted. Defendants contend that “[i]tems made at United States Mint facilities but not
18 lawfully issued, or otherwise lawfully disposed of, remain Government property and
19 are not souvenirs that United States Mint officials can remove and pass down to their
20 heirs.... The item that Plaintiffs hoped to sell at auction as a ‘1974-D Aluminum Cent’
21 is an unauthorized, unissued piece that was struck at the United States Mint at Denver
22 and unlawfully removed from that facility.” (ECF No. 3-1 at 6). Defendants contend
23 that Plaintiffs have not asserted any facts that would support any scenario under which
24 they could plausibly be in lawful possession of the Aluminum Cent at issue.
25 Defendants request that the Court take judicial notice of the letters sent from the Chief
26 Counsel of the U.S. Mint to Plaintiffs and an auction company, a copy of U.S. Mint
27 Regulations from 1970, and the Annual Report of the Director of the U.S. Mint in 1887.
28 (ECF No. 3-2).

On July 3, 2014, Plaintiffs filed an opposition to the Motion to Dismiss. (ECF No. 8). Plaintiffs contend that dismissal is unwarranted because “[f]actual issues abound and ... the Government, to prove its case, must overcome some major obstacles, including the fact that for well over a century it has permitted and encouraged private ownership of non-issued coins just like the one in this case, which constitute most, if not all, of the most valuable collectible U.S. coins in existence.” (ECF No. 8 at 5). Plaintiffs oppose the request for judicial notice.

II. Standard of Review

The Motion to Dismiss is brought pursuant to Federal Rule of Civil Procedure 12(b)(6). Rule 12(b)(6) permits dismissal for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Federal Rule of Civil Procedure 8(a) provides that “[a] pleading that states a claim for relief must contain ... a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) is appropriate where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

“[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citation omitted). “[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* (citation omitted). “When there are

1 well-pleaded factual allegations, a court should assume their veracity and then
 2 determine whether they plausibly give rise to an entitlement to relief.” *Id.* at 679.

3 **III. Discussion**

4 The Complaint alleges: “This is an action to resolve a dispute between Plaintiffs,
 5 the owners of a unique United States coin, a 1974-D Aluminum Cent, and the U.S.
 6 Government, which has demanded without proper legal basis that Plaintiffs turn the
 7 coin over to the U.S. Mint, and has attempted to interfere in Plaintiffs’ legal right to
 8 have their coin sold at public auction....” (ECF No. 1 at 1). The Complaint alleges that
 9 the Aluminum Cent at issue was struck at the Denver Mint while Plaintiff Lawrence’s
 10 father was employed at that facility, and that the Aluminum Cent passed to Plaintiff
 11 Lawrence after his father’s death. *Id.* ¶¶ 34-35. The Complaint alleges no other facts
 12 surrounding the circumstances under which Plaintiff Lawrence’s father obtained the
 13 Aluminum Cent. Mere possession of such a coin is insufficient to establish a legal
 14 ownership of the coin. *Cf. Kern Copters, Inc. v. Allied Helicopter Serv., Inc.*, 277 F.2d
 15 308, 313 (9th Cir. 1960) (“Congress has the power to provide for the disposition of
 16 property of the United States, and the power must be exercised by the authorized
 17 authority, and in the authorized manner.... Inactivity, or neglect, upon the part of
 18 Government officers is insufficient to cause the Government to lose its property.”)
 19 (citations omitted); *Langbord v. U.S. Dep’t of the Treasury*, 888 F. Supp. 2d 606, 608,
 20 637 (E.D. Pa. 2012) (declaring, after a jury verdict, that certain 1933 “Double Eagle”
 21 coins found “buried at the bottom of [plaintiffs’] family safe deposit box” were “not
 22 lawfully removed from the United States Mint and accordingly, as a matter of law, they
 23 remain the property of the United States, regardless of ... how the coins came into
 24 [plaintiffs’] possession”).

25 The Court finds that the Complaint fails to allege sufficient facts to support the
 26 legal conclusions that Plaintiffs are the “owners” of the Aluminum Cent, with a “legal
 27 right to have their coin sold at public auction,” and that “the Government’s claim to
 28 Plaintiffs’ Aluminum Cent is invalid.” Compl. at 1, 18, ECF No. 1; *see Iqbal*, 556 U.S.

1 at 678. Accordingly, the Motion to Dismiss is granted and the request for judicial
2 notice is denied as moot.¹

3 **IV. Conclusion**

4 IT IS HEREBY ORDERED that the Motion to Dismiss is GRANTED. (ECF No.
5 3). The Complaint is dismissed without prejudice. No later than thirty (30) days after
6 the date this Order is filed, Plaintiffs may file a motion for leave to amend the
7 Complaint, accompanied by a proposed first amended complaint. If Plaintiffs fail to file
8 a motion for leave to amend the Complaint, this case shall remain closed without further
9 order of the Court.

10 DATED: July 23, 2014

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12 **WILLIAM Q. HAYES**
United States District Judge

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¹ Defendants have asserted no affirmative claim for relief in this action. The Court makes no findings as to the validity of Defendants' legal claim to the Aluminum Cent in Plaintiffs' possession.